

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WAYNE JOHNSON,

No. 2:04-cv-01236-MCE-JFM P

Petitioner,

vs.

ORDER

J. WOODFORD, et al.,

Respondents.

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Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 17, 2008, this court denied petitioner's application. Judgment was entered on the same day. On April 14, 2008, petitioner timely filed a notice of appeal from the judgment.<sup>1</sup> Petitioner's appeal has been processed and is pending in the United States Court of Appeals for the Ninth Circuit, Case No. 08-15995. On May 5, 2008, petitioner filed an application to proceed in forma pauperis on appeal.<sup>2</sup>

<sup>1</sup> On April 22, 2008, this court issued an order stating that a certificate of appealability should not issue in this action. Good cause appearing, that order will be vacated. See Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir. 2005) (certificate of appealability not required for denial of habeas corpus petition challenging "decision 'regarding the execution'" of a prison sentence).


<sup>2</sup> Petitioner paid the \$5.00 filing fee to proceed in this court.

1 Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford  
2 the costs of appeal. Accordingly, petitioner's application to proceed in forma pauperis will be  
3 granted. See 28 U.S.C. § 1915(a).

4 In accordance with the above, IT IS HEREBY ORDERED that:

- 5 1. Petitioner's May 5, 2008 application to proceed in forma pauperis is granted;  
6 2. This court's April 22, 2008 order is vacated; and  
7 3. The Clerk of the Court is directed to send a copy of this order to the United States  
8 Court of Appeals for the Ninth Circuit.

9 Dated: May 16, 2008

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11 MORRISON C. ENGLAND, JR.  
12 UNITED STATES DISTRICT JUDGE  
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